

**TWO RIVERS-OTTAUQUECHEE  
REGIONAL COMMISSION**

**PROCUREMENT PROCEDURES**

**3117 Rose Hill  
Woodstock, VT 05091**

## PROCUREMENT PROCEDURES

### **1.0 PURPOSE AND AUTHORITY:**

The purpose of this document is to describe the process through which the Two Rivers-Ottawaquechee Regional Commission (TRORC) will procure consultant services and equipment for the accomplishment of assignments provided by state and/or federal agencies that are beyond the ability of the Commission staff either due to workload or available in-house expertise.

This document is intended to satisfy the requirements to self-certify TRORC procurement procedures in compliance with applicable federal regulations (pursuant to 49 CFR 18.36(g)3.) Specific federal agency or Vermont requirements also apply and are in addition to those outlined in Titles 49 and 2.

These policies and procedures have been developed in accordance with the following state and federal statutes and regulations:

24 VSA Chapter 117 - Vermont Municipal and Regional Planning and Development Act.

Vermont Agency of Administration Administrative Bulletin 3.5 - Contracting Procedures.

Title 49 Code of Federal Regulations (CFR) Part 18 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Code of Federal Regulations (CFR) Title 2, Grants and Agreements

- Title 2 CFR, Part 225 – Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)

U.S. Office of Management and Budget (OMB) Circulars as follows:

- OMB A-102 - Administrative Requirements for Grants-in-Aid for States and Local Governments.
- OMB A-133 - Audits of States, Local Governments, and Non-Profit Organizations

### **2.0 DEFINITIONS:**

Agency - an agency, department, division, or other administrative unit of the State of Vermont or Federal Government.

Contract - a mutually binding agreement obligating a seller to provide services, equipment and/or products and the buyer to pay for them. The term contract includes such agreements as “contract”, “agreement”, “miscellaneous agreement”, “purchase order”, “license and/or maintenance agreement”, or other such similar term.”

Contractor - Any third party providing services or materials to TRORC for the purpose of accomplishing a contracted Work Plan.

Equipment - Tangible, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

Services - includes professional services of an individual or of persons working for a business enterprise, that provide an expertise in construction, design, engineering, information technology, real estate, equipment maintenance, etc.

### **3.0 GENERAL PROCUREMENT:**

- a. TRORC will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
- b. TRORC will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts under this program. In addition, no employee, officer or agent of the TRORC shall participate in the selection, award or administration of a contract supported by State or Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - i. the employee, officer or agent or,
  - ii. any member of his immediate family or,
  - iii. his or her partner, or
  - iv. any organization which employs, or is about to employ, any of the above has a financial or other interest in the selection for award.

The TRORC officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. TRORC may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the TRORC officers, employees or agents, by consultants or their agents.

- c. TRORC will review proposed procurement to avoid purchase of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurement to obtain a more economical purchase. Where appropriate, an analysis should be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- d. In order to foster greater economy and efficiency, TRORC will endeavor to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
- e. TRORC will endeavor to use federal and state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- f. TRORC will maintain records sufficient to detail the significant history of procurement. These records will include, but not be limited to, the rationale of the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- g. TRORC will use time and material-type contracts when procuring on state and/or federal jobs only:
  - i. after a determination that no other contract is suitable, and
  - ii. if the contract includes a ceiling price that the contractor exceeds at its own risk.
- h. TRORC alone will be responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protest, disputes, and claims. These standards do not relieve TRORC of any contractual responsibilities under its contracts.
- i. TRORC will have protest procedures to handle and resolve disputes as part of all contracts awarded, and shall, in all instances of such occurrences, disclose information regarding the protest to the said state and/or federal awarding Agency. A protestor must exhaust all State and local potential remedies before pursuing a protest with the Federal Agency. Review by the Federal agency will be limited to alleged violations of federal laws or regulations, or TRORC protest procedures.
- j. All procurement transactions will be conducted in a manner providing full and open competition. The TRORC will be alert to organizational conflicts of interest or noncompetitive practice among contractors that may restrict or eliminate competition or otherwise restrain trade. Awards will be made to the contractor whose offer is most responsive to the solicitation and is most advantageous to the TRORC.
- k. Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurement, contain features which unduly restrict competition. Brand name or equal description may be used as a means to define the performance of other salient requirements of a procurement, and when so used, the specific features of the name brand, which must be met by bidders, shall be clearly specified.
- l. Positive efforts shall be made by the TRORC to utilize Vermont's small businesses and minority/and or women-owned businesses as sources of supplies and services. Such efforts will allow these sources the maximum feasible opportunity to compete for contracts.
- m. Some form of price or cost analysis shall be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indications together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. TRORC must make independent estimates before receiving bids or proposals.
- n. All bids must be binding. Increases may be granted only in cases in which the TRORC and the state/and or federal agency agree in writing that there is work required beyond that in the scope of the original bid specifications.
- o. Small purchases (below \$10,000 in aggregate) may be procured using a process which solicits price, or rates quotations obtained from at least three qualified sources, and receives approval from the awarding state and/or federal agency. Small purchases (below \$250 aggregate) of consumable supplies shall be exempt from this requirement.

- p. Procurement by non-competitive proposals may be used with the written approval of the awarding state and/or federal agency only if it is determined that either the small purchase, sealed bid or competitive proposal process is not feasible, AND one of the following circumstances applies:
  - i. the item is available only from a single source;
  - ii. the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - iii. after solicitation from a number of sources, competition is determined inadequate.
- q. For those purchases above \$10,000, the TRORC shall use either a sealed bid or a competitive proposal process. In either case, provision shall be made to publicly advertise the solicitation and secure an adequate number of bid/proposals. The TRORC will develop and use technical evaluation and review criteria, and choose the contractor proposal which best responds to the bid/proposal specifications.

The following requirements shall apply in a competitive negotiation situation:

- i. proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition, consistent with the nature and requirements of the procurement. All qualified sources may submit a proposal. The request for proposals shall be publicized.
- ii. the request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.
- iii. provision shall be made for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.
- iv. award may be made to the responsible offeror whose proposal will be most advantageous, price and other factors considered. Unsuccessful offerors will be notified promptly.
- r. For Federal Highway Administration Funding for example, all solicitations for engineering and design-related services shall follow the procurement process outlined in 23 CFR, Part 172.
- s. TRORC will comply with 19 VSA 10a for procurement of Architectural Engineering (A/E) and related professional services. Only state and/or federal agency pre-qualified firms for A/E may be used as approved by program engineer.
- t. The TRORC procurement file must contain the awarding state and/or federal agency's written approval of:
  - i. the technical specifications for all proposed procurement (purchases or personal services contracts).
  - ii. the list of firms to be notified about a procurement request. Full and open competition is required.

- iii. the final draft contract or agreement or purchase order including submission of the TRORC cost estimates, a description of the cost on price analysis performed by the TRORC, and the technical evaluation of all proposals.
- u. A procurement selection committee shall be established and may include the state or federal agency as a non-voting member.
- v. The TRORC shall use state and/or federal agency provided pro-forma contracts and agreements for contractual compliance with State and Federal requirements.
- w. The TRORC shall prepare a technical evaluation for the proposals received.

#### **4.0 PURCHASE OF EQUIPMENT:**

All equipment procured on behalf of a state and/or federal agency must be pre-approved if not in an approved work plan. Title to the equipment shall be jointly held between said state and/or federal agency and the TRORC. The purchased equipment must be directly related to the implementation of a specific state and/or federal program and is to be used only for the originally authorized purpose. If the equipment is no longer needed, the TRORC will notify the state and/or federal agency of this for possible use on other projects or programs supported by said agency. However, when acquiring replacement equipment approved by a specific state and/or federal agency, the TRORC may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

The TRORC will not use equipment acquired with grant funds to provide services for a fee in order to compete unfairly with private firms which provide equivalent services.

The TRORC will be responsible for the management of the equipment while in use in such a fashion that at a minimum meets the following requirements:

- a. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, the cost of the property, the location and use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- b. A physical inventory of the property must be taken and the results reconciled with the property records at least every two years.
- c. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage, or theft shall be investigated.
- d. Adequate maintenance procedures must be developed to keep the property in good condition.
- e. Proper sales procedures designed to ensure the highest possible return must be developed and implemented if the TRORC is authorized to sell the property.

When original or replacement equipment acquired under an agreement is no longer needed for the original project or program, disposition of the equipment will be made as follows:

- a. Items of equipment with a current per-unit market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation.
- b. Items of equipment with a current per-unit market value in excess of \$5,000 may be retained or sold and the state or federal agency shall have the right to an amount calculated by multiplying the current market value or proceeds from sale by VTrans's share of the equipment.

In cases where the TRORC fails to take appropriate disposition actions, the state and/or federal awarding agency may direct the TRORC to take excess property and disposition actions. The Federal Government may reserve the right to transfer title to the Federal government or a third party when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

- a. The property shall be identified in the agreement or otherwise made known to the TRORC in writing.
- b. The state and/or federal awarding agency shall issue disposition instructions within 120 calendar days after the end of said agency's support of the project for which it was acquired. If the state and/or Federal agency fails to issue disposition instructions within the time frame, the TRORC will follow the instructions as described above. When title is transferred, the TRORC will be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value.

#### **5.0 PURCHASE OF SUPPLIES:**

Title to supplies acquired under an agreement will vest upon acquisition to the TRORC. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the state and/or federal award, and if the supplies are not needed for any other state and/or Federally sponsored programs or projects, the TRORC shall compensate the awarding agency for its share.

Adopted by the TRORC Board of Commissioners, October 28, 2009.

  
\_\_\_\_\_  
Peter G. Gregory, AICP  
Executive Director